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CURRENT LEGISLATION

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"RED LIGHT" INJUNCTION AND ABATEMENT ACTS.—The strong arm of equity has lately found increasing employment through the enactment in thirty-eight states of "Red Light" Laws for the abatement of disorderly houses.¹ Modelled upon the liquor laws which originated in Iowa,² these laws owe their enactment to the inadequacy of criminal prosecutions; and accordingly permit any citizen of the county wherein the nuisance exists to bring his civil action to enjoin and abate it. The effectiveness of the legislation lies in stringent provisions for abatement and in penalties for contempt.

This is clearly police legislation, designed to protect the public health and morals rather than to provide a remedy for injury to private property. For instance, the injunction is made binding upon the defendants throughout the jurisdiction of the court³ and frequently throughout the entire state.⁴ Not only are the costs of the action made a lien upon the premises; but in many states a "tax" or fine is levied when the final injunction is issued.⁵ As a fine this levy has been thought invalid in one decision,⁶ but as a tax its validity has generally not been questioned.

Until recently these statutes have uniformly been upheld.⁷ Follow-

¹Ala. Laws 1919 No. 53; Ariz. Rev. St. 1913 § 4340; Cal. Gen. Laws 1915 No. 2798; Colo. Laws 1915 c. 123; Conn. Gen. Stat. 1918 § 2705; D. C. (1913) 38 Stat. 280; Ga. Laws 1917 p. 177; Idaho Comp. Stat. 1919 § 7042; Ill. Laws 1915 p. 371; Ind. Ann. Stat. 1918 § 293a; Iowa Laws 1915 c. 71; Ky. Stat. 1918 § 3941m; La. Laws 1918 No. 47; Mass. Laws 1914 c. 624; Mich. Comp. Laws 1915 § 7781; Minn. Gen. Stat. 1913 § 8717; Miss. Laws 1918 c. 193; Mont. Laws 1917 c. 95; Neb. Rev. Laws 1913 § 8775; N. H. Laws 1919 c. 95; N. J. Laws 1916 p. 315; N. C. Laws 1913 c. 761; N. D. Comp. Laws 1913 § 9644; Ohio Laws 1917 p. 514; Ore. Laws 1913 c. 274; S. C. Laws 1918 p. 814; S. D. Rev. Code 1919 § 2078; Utah Comp. Laws 1917 § 4275; Va. Laws 1916 c. 463; Wash. Rem. 1915 Code § 946; Wis. Stat. 1917 § 3185b. See also varying provisions in: Kans. Gen. Stat. 1915 § 3650; Maine Rev. Stat. 1916 c. 23; Md. Laws 1918 c. 84; N. Y. Laws 1914 c. 365; Pa. Laws 1913 No. 852; Tenn. Laws 1913, 2nd Sess. c. 2; Tex. Pen. Code 1916 Art. 501.

²Iowa Laws 1884 c. 143.

³Statutes in Ariz., D. C., Ga., Iowa, Ill., Mich., Minn., Miss., Neb., N. C., Ore., S. D., Utah, *ut supra*.

⁴Statutes in Ind., Ky., La., N. H., N. D., S. C., Va., *ut supra*.

⁵Statutes in Ariz., Conn., D. C., Ga., Ill., Iowa, Minn., Neb., Ohio, S. D., Wash., *ut supra*.

⁶State *ex rel. English v. Fanning* (1914) 96 Neb. 123, 147 N. W. 215. The Court withdrew this pronouncement on rehearing, *infra*, footnote 7, influenced by the intervening decision in *State v. Ryder*, *infra*, footnote 7.

⁷People *ex rel. Bradford v. Barbieri* (1917) 33 Cal. App. 770, 166 Pac. 812; People *v. Casa County* (1917) 35 Cal. App. 194, 169 Pac. 459; People *ex rel. Thrasher v. Smith* (1916) 275 Ill. 256, 114 N. E. 31; Chase *v. Revere House* (1918) 232 Mass. 88, 122 N. E. 162; State *ex rel. Wilcox v. Ryder*

ing *Littleton v. Fritz*,⁸ the courts hold that these laws, like the liquor laws, merely extend the traditional jurisdiction of equity over nuisances. Those who insist that the right of jury trial be preserved and who invoke the due process clauses of the constitutions receive answer in general terms that the jurisdiction of equity over public nuisances was well established at the time of the adoption of the state constitutions. The courts also emphasize the manifest difference in purpose and effect between the injunction and the sentence in criminal prosecutions for nuisance.

Of course, the jurisdiction of equity over nuisances where property rights are involved is conceded. The petitioner has his relief whether the nuisance is criminal or not, if he can show that he has suffered special damage not suffered by the general public.⁹ *A fortiori*, the Attorney General can invoke equitable relief to protect public property in lands or highways from nuisance or purpresture.¹⁰ But the question which is presented by the "Red Light" Laws is of long standing: can the Attorney General or designated citizens seek to enjoin acts which do not injure specific property, and where no pecuniary interests are involved? The older Chancellors, while conceding the power of equity to deal with nuisances, refused to pass upon the primary question of the existence of a nuisance unless an injury to property was clearly threatened, intimating that it was this threat alone which gave them jurisdiction. Such has been the modern English interpretation of *Attorney General v. Cleaver*¹¹ and *Crowder v. Tinkler*.¹² The American courts, however, have seized upon these expressions of the jurisdiction of chancery over public nuisances to extend equitable relief to a great variety of cases where no pecuniary damage has been involved,¹³ and these same authorities are invoked in sustaining the "Red Light" Laws.

(1914) 126 Minn. 95, 147 N. W. 953; *State ex rel. Ford v. Young* (1918) 54 Mont. 401, 170 Pac. 947; see *State ex rel. English v. Fanning* (1914) 97 Neb. 224, 149 N. W. 413; *State ex rel. Kern v. Jerome* (1914) 80 Wash. 261, 141 Pac. 753; *State ex rel. Dow v. Nichols* (1915) 83 Wash. 676, 145 Pac. 986.

⁸(1885) 65 Iowa 488.

⁹*Wheeler v. Bedford* (1886) 54 Conn. 244, 7 Atl. 22; *Cranford v. Tyrell* (1891) 128 N. Y. 341, 28 N. E. 514.

¹⁰*Atty. Genl. v. Forbes* (1836) 2 My. & Cr. 123; *Atty. Genl. v. Richards* (1794) 2 Anstr. 603, 615; *In re Debs* (1894) 158 U. S. 564, 593, 15 Sup. Ct. 900.

¹¹(1811) 18 Ves. 211, distinguishing *Mayor of London v. Bolt* (1799) 5 Ves. Jr. 129 and the dictum of Lord Hardwicke in *Baines v. Baker* (1752) Ambl. 158. Lord Eldon sent his petitioner over to the King's Bench for a jury trial.

¹²That irreparable injury to property, not nuisance, is the ground for relief appears in *Crowder v. Tinkler* (1816) 19 Ves. 617; *Atty. Genl. v. Sheffield Gas Co.* (1853) L. J. 22 Ch. 811, 813.

¹³*State v. Mayor of Mobile* (Ala. 1837) 5 Port. 279, 312 (purpresture); *Mayor of Columbus v. Jacques* (1860) 30 Ga. 506 (purpresture); rule extended to common nuisance: see *Edison v. Ramsey* (1917) 146 Ga. 767, 92 S. E. 513 (brothel); *Commonwealth v. McGovern* (1903) 116 Ky. 212, 75 S. W. 261 (prize-fight); *State ex rel. Crow v. Canty* (1907) 207 Mo. 439, 454, 105 S. W. 1078 (bull-fight). But see Kent, *Ch.* in *Atty. Genl. v. Insurance Co.* (1817) 2 Johns. Ch. 371. See also Mack, *The Revival of Criminal Equity* (1903) 16 Harv. Law Rev. 389. The New Jersey Chancellor has frequently expressed his reluctance to exercise the

The recent case of *Hedden v. Hand*,¹⁴ in which the New Jersey Court of Errors and Appeals holds unconstitutional the Injunction and Abatement Act of that state,¹⁵ is the first dissent in this line of decisions. The case is possibly distinguishable under a section of the New Jersey Constitution which is interpreted to give to the common law courts certain prerogatives.¹⁶ But the inquiry of the court is similar to the other considerations of "Red Light" Laws; and on the question of equity jurisdiction its conclusion is opposed to that of the other cases. Its reasoning is based upon a close reading of the English precedents with the conclusion that threatened injury to property is the sole ground for equitable relief. It is urged that an adequate remedy exists at law in the order of abatement which may issue as part of the sentence in a criminal action;¹⁷ although the court will not order the sheriff to take action until it is shown that the defendant, to whom the order is issued, has refused to obey.¹⁸ The court appears sound in its interpretation of the old English cases, but ignores the large number of American cases previously mentioned.

It seems unnecessary to follow these broad American precedents in upholding the present legislation. This is a question of legislative discretion in extending the jurisdiction of chancery courts. It must be conceded that the extension here is very slight. It serves merely to abolish in this restricted class of cases the technical rules on special damage.¹⁹ There seems to be little sound sense in requiring that relief against these nuisances, whether by the Attorney General or on relation, should depend upon some doubtful *jus publicum*, unless as a noted counsel once observed, "health be of less value than property".²⁰ And the justification is abundant. For although theoretically there is an adequate remedy at law in the indictment and criminal abatement, actually, as a matter of common knowledge, this agency has failed. If the reason for the special damage rule was as Coke said "for avoiding a multiplicity of suites",²¹ nothing could be better calculated than this

broader jurisdiction: *Atty. Genl. v. Brown* (1873) 24 N. J. Eq. 89, 92; but see *Atty. Genl. v. Paterson* (1899) 58 N. J. Eq. 1, 13, 42 Atl. 749. For a discussion of the American tendency, see Schofield, (1914) 8 Illinois Law Rev. 19, who traces the rule to the influence of 2 Story, *Equity Jur.* (13th ed.) § 921, and Eden, *Injunctions* (3rd ed., 1852) *262.

¹⁴(1919) 107 Atl. 285.

¹⁵N. J. Laws 1916 c. 154.

¹⁶N. J. Const. Art. X § 1: "The several courts of law and equity . . . shall continue, with the like powers and jurisdiction as if this Constitution had not been adopted."

¹⁷*Taggart v. Commonwealth* (1853) 21 Pa. 527; see *King v. Stead* (1799) 8 T. R. 142, 144. The possibility of indictment and abatement at common law was held not to bar injunctive relief in *Poole v. Rehoboth* (1911) 9 Del. Ch. 192.

¹⁸*Barclay v. Commonwealth* (1855) 25 Pa. 503; *Campbell v. State* (1849) 16 Ala. 144.

¹⁹The physical discomfort due to a neighboring brothel was special damage such as to warrant a recovery in *Cranford v. Tyrell*, *supra*, footnote 9; but the resultant decrease in property values was too consequential: *Anderson v. Doty* (1884) 33 Hun 160.

²⁰Sir Samuel Romilly in *Atty. Genl. v. Cleaver*, *supra*, footnote 11, at p. 215.

²¹Co. Litt. 56 a.

legislation to achieve the same end, for it both insures prosecution, and by its injunction obviates the necessity for repeated indictments.

Fundamentally this legislation is preventive and not penal. For although the order for abatement prescribes the closing of the premises and the sale of the personalty found therein, nevertheless the premises and property are almost invariably subject to release upon the payment of costs by the owner and upon filing of sufficient security to insure good behavior.²² In reality the injunction and abatement together merely serve to bind the defendant over to keep the peace. Legislation of this type cannot seriously endanger the right of jury trial, nor tend to revolutionize equity traditions. Such is the sensible conclusion of the American courts.

THE EDGE EXPORT FINANCE ACT.—The close of the war finds the United States for the first time in its history an investing nation, prepared to take its place with France and England in the financing of undeveloped countries in South America and Asia. Moreover, the progressive depreciation of the currencies of Europe in terms of dollars has seriously impaired the purchasing power of our European customers. To meet the threatened contraction in our foreign trade and to provide the machinery for American participation in international credit operations the recent Edge Act has been passed, amending Section 25 of the Federal Reserve Act.¹

Section 25 previously made certain limited provisions for foreign banking. It authorized national banks with capital and surplus of a million dollars or more to establish foreign branches, and to invest up to ten per cent. of their capital and surplus in any American corporations engaged in international banking.² But the financial situation is such to-day that European merchants need more than the ordinary short-time credits, if they are to continue purchasing in this country. To provide the needed long-term credits, the Edge Act projects two mechanisms.³ On the one hand, it permits the erection of corporations to engage in regular commercial banking abroad in connection with foreign business. On the other hand, it provides for investment corporations which will accept from prospective foreign buyers collateral security in the form of high-grade foreign bonds or mortgages of realty. Against these they will sell their own debentures to the American investor, the proceeds of which will enable the corporations to discount the foreigners' long bills, thus securing for the American exporter immediate cash payment.

The Federal Reserve Act is inadequate to provide this machinery for long credits. Federal Reserve Banks are prohibited from re-discounting foreign acceptances with more than ninety days to run;⁴ member banks may not accept bills arising out of foreign trade of more than

²²There is no provision for release in the North Dakota Statute, *supra*, footnote 1.

¹Pub. Laws No. 106, 66th Congr., 1st Sess. Approved Dec. 24, 1919.

²(1916) 39 Stat. 755, U. S. Comp. Stat. § 9745.

³Hearings before the Committee on Banking and Currency of the House of Representatives on S. 2472 (1919) 78.

⁴(1916) 39 Stat. 752, U. S. Comp. Stat. § 9796(4).